

§ 20.102

(c) Records relating to administrative enforcement action that are not disclosed to any member of the public constitute investigatory records that are subject to the rules for disclosure established in § 20.64. For example, an establishment inspection report is an investigatory record and thus subject to § 20.64 except insofar as the Commissioner exercises his discretion to release it pursuant to § 20.82.

§ 20.102 Court enforcement records.

(a) All records and documents filed in the courts are available for public disclosure unless the court orders otherwise. The Food and Drug Administration will make available for public disclosure such records or documents if the agency can determine that it has an accurate copy of the actual record or document filed in the court. If the Food and Drug Administration cannot determine whether it has an accurate copy of such a record or document, the person requesting a copy shall be referred to the court involved.

(b) After a recommendation for court action has been finally refused by a United States attorney, the correspondence with the United States attorney and the Department of Justice with respect to that recommendation, including the pleadings recommended for filing with the court, is available for public disclosure. Prior to disclosure of any record specifically reflecting consideration of possible criminal prosecution of any individual, all names and other information that would identify an individual who was considered for criminal prosecution but who was not prosecuted shall be deleted unless the Commissioner concludes that there is a compelling public interest in the disclosure of such names.

§ 20.103 Correspondence.

(a) All correspondence to and from members of the public, members of Congress, organization or company officials, or other persons, except members of the Executive Branch of the Federal Government and special government employees, is available for public disclosure.

(b) Any such correspondence is available for public disclosure at the time

21 CFR Ch. I (4–1–02 Edition)

that it is sent or received by the Food and Drug Administration unless a different time for such disclosure is specified in other rules established or cross-referenced in this part, e.g., correspondence relating to an IND notice or an NDA in § 314.430 of this chapter.

[42 FR 15616, Mar. 22, 1977, as amended at 54 FR 9038, Mar. 3, 1989]

§ 20.104 Summaries of oral discussions.

(a) All written summaries of oral discussions, whether in person or by telephone, with members of the public, members of Congress, organization or company officials, or other persons, except members of the Executive Branch of the Federal government or special government employees, are available for public disclosure.

(b) Any such summary is available for public disclosure at the time that it is prepared by the Food and Drug Administration unless a different time for such disclosure is specified in other rules established or cross-referenced in this part, e.g., summaries of oral discussions relating to a food additive petition in § 171.1(h)(3) of this chapter.

(c) If more than one summary of an oral discussion exists in a Food and Drug Administration file, all such summaries shall be disclosed in response to any request for such summary.

§ 20.105 Testing and research conducted by or with funds provided by the Food and Drug Administration.

(a) Any list that may be prepared by the Food and Drug Administration of testing and research being conducted by or with funds provided by the Food and Drug Administration is available for public disclosure.

(b) Any contract relating to agency testing and research, and any progress report relating thereto, is available for public disclosure.

(c) The results of all testing or research conducted by or with funds provided by the Food and Drug Administration, such as toxicological testing, compliance assays, methodology studies, and product testing, are available for public disclosure when the final report is complete and accepted by the

responsible Food and Drug Administration official, after deletion of any information that would reveal confidential investigative techniques and procedures, e.g., the use of “markers” to document adulteration of a product. If such results are disclosed in an authorized manner to any member of the public before the final report is available, they are immediately available for public disclosure to any member of the public who requests them.

(d) Access to all raw data, slides, worksheets, and other similar working materials shall be provided at the same time that the final report is disclosed.

§ 20.106 Studies and reports prepared by or with funds provided by the Food and Drug Administration.

(a) The following types of reports and studies prepared by or with funds provided by the Food and Drug Administration are available for public disclosure upon their acceptance by the responsible agency official:

(1) Quarterly and annual reports of the agency.

(2) External investigations or review of agency needs and performance.

(3) Surveys, compilations, and summaries of data and information.

(4) Consumer surveys.

(5) Compliance surveys.

(6) Compliance programs, except that names of specific firms, the location of specific activities, and details about sampling numbers or sizes shall be deleted until implementation of the program is completed.

(7) Work plans prepared by Food and Drug Administration centers, field offices, and other components, except that names of specific firms, the location of specific activities, and details about sampling numbers or sizes shall be deleted until implementation of the plan is completed.

(b) The following types of reports and studies prepared by or with funds provided by the Food and Drug Administration are not available for public disclosure:

(1) Internal audits of agency needs and performance.

(2) Records relating to the internal planning and budget process.

(3) Legislative proposals or comments prior to submission to Congress.

[42 FR FR 15616, Mar. 22, 1977, as amended at 50 FR 8995, Mar. 6, 1985]

§ 20.107 Food and Drug Administration manuals.

(a) All Food and Drug Administration Staff Manuals and instructions to staff that affect a member of the public are available for public disclosure. An index of all such manuals is available at the Food and Drug Administration's Freedom of Information Public Room in accordance with § 20.26.

(b) Manuals relating solely to internal personnel rules and practices are not available for public disclosure except to the extent that the Commissioner determines that they should be disclosed pursuant to § 20.82.

(c) All Food and Drug Administration action levels which are used to determine when the agency will take regulatory action against a violative product, limits of sensitivity and variability of analytical methods which are used in determining whether a product violates the law, and direct reference levels above which Food and Drug Administration field offices may request legal action directly to the office of the General Counsel, are available for public disclosure.

[42 FR 15616, Mar. 22, 1977, as amended at 46 FR 8457, Jan. 27, 1981; 46 FR 14340, Feb. 27, 1981]

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

(a) All written agreements and understandings signed by the Food and Drug Administration and other departments, agencies, and organizations are available for public disclosure.

(b) A permanent file of all such agreements and understandings is available for public review during working hours in the Food and Drug Administration's Freedom of Information Public Room.

(c) All such agreements and understandings shall be published in the FEDERAL REGISTER, except those agreements and memoranda of understanding between FDA and State or